

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

KMGP SERVICES, INC.

Employer-Petitioner

and

Case 10-UC-230

PACE INTERNATIONAL UNION,
LOCAL 3-0584¹

Union

**REGIONAL DIRECTOR'S DECISION
AND ORDER DISMISSING PETITION**

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. KMGP Services, Inc., herein called Employer-Petitioner or Employer, is a Delaware corporation engaged in energy transportation and storage and in the operation of a refined liquid petroleum products pipeline system, with an office and place of business in Alpharetta, Georgia. Its customers and end users include energy and liquid fuel companies, services stations, various airports, and consumers. During the past calendar year, a representative period, the Employer

¹ The Union's name appears as amended at the hearing.

sold and shipped from its pipeline facilities goods valued in excess of \$50,000 directly to points outside the State of Georgia. Accordingly, the Employer-Petitioner is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Employer-Petitioner seeks to clarify the existing operations and maintenance bargaining unit³ consisting of approximately 112 employees employed at 22 locations situated throughout its liquid petroleum pipeline system by including approximately 21 employees who work at seven pipeline truck terminals recently acquired by the Employer from Exxon Mobil. The Employer claims clarification is appropriate because employees at the seven newly-acquired terminals constitute an accretion to the existing system-wide bargaining unit.⁴ The Union disputes the Employer's accretion claim, contending that these 21 employees constitute a separately identifiable group who perform substantially different functions, are significantly less skilled, and work at different facilities subject to separate supervision, and different terms and conditions of employment.⁵ I find that the 21 employees at the seven newly-acquired pipeline truck terminals do not constitute an accretion to the system-wide unit, and I shall therefore dismiss the petition. Before turning to the reasons for my conclusion, I describe below the

² The Employer's post-hearing brief has been duly considered.

³ The unit description in Article 1 (Recognition) of the current collective bargaining agreement between the Employer-Petitioner and the Union is "all full-time operations & maintenance specialists, field controllers, maintenance technicians, and right of way technicians employed by the Company at its Plantation Pipe Line Company group, excluding all office, administrative, lab, support, engineering, control center controllers, and supervisors." The current agreement is effective from May 1, 2002 through April 30, 2005.

⁴ In its post-hearing brief, the Employer cited several cases involving public utilities, including Cellco Partnership, 341 NLRB No. 63 (2004), in support of its argument that a finding of accretion is appropriate here. Given my findings below with respect to lack of interchange, separate supervision, bargaining history, and differences in skills, I find that the public utility cases cited by the Employer are factually and legally distinguishable from the instant case. Further, I have not found (and the Employer has not cited) a case in which the Board has held that a company which operates a liquid petroleum pipeline providing gasoline products to energy and liquid fuel companies, service stations, and various airports is to be considered a "public utility" in the representation case context.

⁵ The Union also claims the petition is untimely inasmuch as the Employer seeks mid-term clarification, citing Safeway Stores, Inc., 216 NLRB 819 (1975), a case involving supervisory status issues. It is well settled that the Board will consider unit clarification during the term of a collective bargaining agreement if the procedure is

Employer's pipeline operation, and its recent acquisition of the seven pipeline truck terminals from Exxon Mobil.

The Employer operates the Plantation pipeline, in partnership with Exxon Mobil⁶, at approximately 22 locations located throughout the southeastern United States, stretching from Baton Rouge, Louisiana to the Washington, D.C. area (Newington, Virginia). The Employer receives refined petroleum products (e.g., gasoline, diesel and jet fuel, kerosene, and heating oil) at refineries in the Gulf Coast area, and transports these products to customers located in the southeast up through the Washington, D.C. area.⁷

The Employer employs approximately 112 bargaining unit employees at 22 locations (including pumping stations, delivery terminals and tank farms). The record reflects that these employees are employed in the following classifications: approximately 70 operations & maintenance ("O&M") specialists; 16 mechanical technicians; 18 electrical technicians; and six right of way ("ROW") technicians. The work locations of the unit employees span the length of the southeast, ranging from approximately 20 employees in Baton, Rouge, Louisiana⁸, to approximately eight employees in the Washington, D.C. area.⁹ Along the way, there are approximately 12 one-employee stations, one O&M specialist working in each of 12 separate locations (in Meridian, Mississippi; in Alabama at Montgomery and Oxford; in Columbus, Macon, Austell, and Athens, Georgia; in Belton and Spartanburg, South Carolina; in Knoxville,

invoked to determine the unit placement of employees involved in a new operation. Crown Cork & Seal Co., 203 NLRB 171 (1973).

⁶ The Employer owns 51%, and Exxon Mobil owns 49%.

⁷ The Plantation pipeline is one of only two pipelines which supply liquid fuels to service stations, several airports (Atlanta, Charlotte, and Washington, D.C., including Reagan National and Dulles), and other customers on the east coast. The second pipeline (Colonial), a direct competitor of Plantation, shares much of the same right of way, and is owned by a different company.

⁸ The Baton Rouge unit employees include 13 O&M specialists; three electrical technicians; three mechanical technicians; and one ROW technician.

⁹ The eight unit employees at the Washington location (in Newington, Virginia) include six O&M specialists; one ROW technician; and one electrical technician.

Tennessee; in Charlotte, North Carolina; and in Roanoke, Virginia); and a two-employee (one O&M specialist and one ROW specialist) location in Chattanooga, Tennessee.

The other seven locations include four tank farms¹⁰ where products are stored and unloaded. The unit employees working at these four tank farms include 12 in Collins, Mississippi (six O&M specialists; two mechanical technicians; three electrical technicians; and one ROW technician); 12 in Helena, Alabama (seven O&M specialists; two mechanical technicians; two electrical technicians; and one ROW technician); 15 in Bremen, Georgia (nine O&M specialists; two mechanical technicians; three electrical technicians; and one ROW technician); and 13 in Greensboro, North Carolina (eight O&M specialists; two mechanical technicians; two electrical technicians; and one ROW technician).

About 18 remaining unit employees work at three locations, including five in Doraville, Georgia (two O&M specialists; one mechanical technician; one electrical technician; and one ROW technician); seven in Gastonia, North Carolina (two O&M specialists; two mechanical technicians; two electrical technicians; and one ROW technician); and six in Richmond, Virginia (two O&M specialists; two electrical technicians; one mechanical technician; and one ROW technician).

In March, 2004, the Employer acquired seven pipeline truck terminals previously operated by Exxon Mobil. All but one of the seven acquired terminals are located within a hundred yards or so (or “across the fence”) from other Employer pipeline locations in: Greensboro, North Carolina; Richmond, Virginia; Washington, D.C. area (in Newington, Virginia); Knoxville, Tennessee; Charlotte, North Carolina; and Collins, Mississippi. The seventh acquired terminal is located about eight miles away from the Employer’s pipeline location in Roanoke, Virginia.

¹⁰ There is a fifth tank farm at the Baton Rouge location.

At the hearing, Director of Field Operations David Hildreth testified that the seven terminals were “an attractive acquisition” because they were located in close proximity to existing pipeline locations, and that “with free interchange of employees” the Employer could effect efficiencies with less employee expense. The Employer thus hired only 21 of the 30 former Exxon Mobil employees, and classified them all as “terminal operators¹¹,” with four based in Knoxville; three based in Greensboro; four in Roanoke; three in Richmond; two in the Washington, D.C. area (in Newington, Virginia); four in Charlotte; and one in Collins.

The pipeline operations, including the seven newly acquired terminals, fall administratively within the Employer’s “Southeast Region Field Operations,” headed by a corporate Vice President (Jerry Milhorn) for Operations and Engineering East who is based at corporate headquarters in Houston, Texas. Next down the hierarchy is Hildreth, Director of Field Operations, who is based in Bremen, Georgia. There are four Operations Managers who report to Hildreth, including Murray Clayton (based in Greensboro), who is responsible for pipeline operations at eight pipeline locations; he is also responsible for five of the seven newly acquired terminals, which include about 16 of the employees the Employer seeks to include.¹²

The other three Operations Managers reporting to Hildreth are Eddie Newman (based in Helena); Marty Sanford (based in Collins); and Earl Crochet (based in Baton Rouge). Newman is responsible for the newly acquired terminal in Knoxville (including about four of the disputed 21 employees) as well as for 11 of the pipeline locations, including a little over one-third (42) of

¹¹ One of the hired employees was evidently a former contract employee for Exxon Mobil; the remaining 30 former employees were employed by Exxon Mobil in various classifications, including mechanic maintenance/technicians (approximately 22); one helper; two mechanics; and six terminal operators. Prior to the acquisition none of the Employer’s unit employees were based at these terminals.

¹² Clayton is responsible for about one-third (approximately 36) of the unit employees at the eight pipeline locations: Washington; Richmond; Roanoke; Greensboro; Charlotte; Gastonia; Spartanburg; and Belton. The five newly acquired terminals for which Clayton is responsible are: Washington; Richmond; Roanoke; Greensboro; and Charlotte;

the unit employees.¹³ Sanford is responsible for two pipeline locations (Collins and Meridian), including about 15 unit employees, as well as the one employee at the newly acquired Collins terminal. Crochet is responsible for Baton Rouge, including about 20 unit employees.

The labor relations and human resources policies for the pipeline (including the newly acquired terminals) are overseen by John Dalton, Director of Human Resources for the Employer's eastern region, who is (apparently) based in Alpharetta, Georgia. He reports directly to the corporate Vice President for Human Resources (Roger Mosby), who is based at corporate headquarters in Houston. Dalton is responsible for negotiation of collective bargaining agreements and the grievance process; he is the official who oversaw the hiring of the 21 (of 30) former Exxon Mobil employees as "terminal operators" at the newly acquired terminals. Dalton and the respective operations managers interviewed the employees and made joint decisions (with input from Hildreth) as to whom to bring on board.¹⁴

I turn now to the Employer's contention that the existing system-wide pipeline unit consisting of about 112 employees should be clarified to include the 21 terminal operators at the seven newly acquired terminals. As a general rule, the Board has followed a restrictive policy in finding accretion because it forecloses the employees' basic right under Section 7 to select their own bargaining representative (or to choose not to have one). Compact Video Services, 284 NLRB 117, 118 (1987); Towne Ford Sales, 270 NLRB 311 (1984). The Board "will not, under the guise of accretion, compel a group of employees who may constitute a separate appropriate unit, to be included in an overall unit without allowing those employees the opportunity of expressing their preference in a secret election." Melbet Jewelry Co., 180 NLRB 107, 110 (1969). The Board will thus find accretion appropriate only where the disputed employees

¹³ The 11 pipeline locations for which Newman is responsible are: Helena; Montgomery; Oxford; Bremen; Chattanooga; Knoxville; Columbus; Macon; Austell; Doraville; and Athens.

¹⁴ Dalton and Hildreth apparently interviewed the superintendents, foremen and working foremen, and the respective operations managers interviewed the other employees. Dalton and Hildreth decided that all of the hired employees

display “little or no separate group identity,” and share “an overwhelming community of interest” with employees in the preexisting unit. Dennison Mfg. Co., 296 NLRB 1034, 1036 (1989). See also Giant Eagle Markets Co., 308 NLRB 206 (1992); Safeway Stores, 256 NLRB 918 (1981).

The Board has identified two factors as especially important in the consideration of an accretion claim. E.I. Du Pont de Nemours, Inc., 341 NLRB No. 82 (2004), sl. op. 2. One of these factors is the degree of interchange between the unit employees and claimed accreted employees. E.I. Du Pont, *supra*; Mac Towing, 262 NLRB 1331 (1982); Judge & Dolph Ltd., 333 NLRB 175, 183 (2001). No weight is assigned to the fact that interchange is feasible when in fact there has been no actual interchange of employees. Combustion Engineering, 195 NLRB 909, 912 (1972). The other especially important factor considered by the Board is whether the day-to-day supervision of employees is the same in the group sought to be accreted. E.I. Du Pont, *supra*; Save-It Discount Foods, 263 NLRB 689 (1992). This is particularly important, since the day-to-day problems and concerns among the employees at one location may not necessarily be shared by employees who are separately supervised at another location. Judge & Dolph, *supra*, 333 NLRB at 185; Renzetti’s Market, 238 NLRB 174, 175 (1978).

In deciding whether an accretion exists, the Board has also considered relevant such additional factors as similarity of terms and conditions of employment; whether there are significant differences in skills, functions, qualifications, wages, and assigned duties. The degree of functional and administrative integration, geographic proximity, as well as bargaining history, are also other important factors considered by the Board. See J.I. Dolph, *supra*, 333 NLRB at 181; Dennison Mfg., *supra*, 296 NLRB at 1036; Compact Video, *supra*, 284 NLRB at 119; see also Archer Daniels Midland Co., 333 NLRB 673, 675 (2001); Massachusetts Electric Co., 248

would be newly classified as “terminal operators,” at four different pay levels based on experience (i.e., “entry,” 12 months; 24 months; 36 months).

NLRB 155 (1980); Jos. Schlitz Brewing Co., 192 NLRB 553 (1971); Pullman Industries, 159 NLRB 580 (1996); and Aerojet-General Corp., 185 NLRB 794 (1970).

Cases in which every factor favors accretion are, of course, rare. In the vast majority of cases, a review of all the factors does not dictate only one result or the other. The normal situation presents a variety of elements, some militating toward and some against accretion. The Board therefore requires a balancing of factors in order to reach the appropriate decision. E. I. Du Pont, *supra*.¹⁵ In reaching my determination herein to dismiss the petition, I have concluded that the factors favoring accretion are strongly outweighed by those factors which militate against it. In reaching this conclusion, I note the following.

Skills and Functions: Though the terminal operators and unit employees perform similar duties on similar equipment, it is clear from the record that unit employees have more skill and training. Under Article 12 of the current collective bargaining agreement, all unit employees are required to complete different levels of “O&M” training. Moreover, pursuant to Article 12, if they do not pass “training completion tests/evaluations” within “established times,” they are subject to discharge. The Union President testified at the hearing that the pipeline employees are subject to “operator qualifications” mandated by the Department of Transportation and the Office of Pipeline Safety in order to perform “covered tasks” on pipeline systems. The terminal operators at the newly acquired terminals are evidently not subject to the same “OQ” training requirements and are not “OQ” qualified to work the high pressure lines the unit employees typically work at the pipeline locations.¹⁶ The new wage scale set by the Employer for

¹⁵ In Du Pont, at fn. 5, the Board noted an earlier case (citation omitted) in which it was concluded that the factors against finding an accretion were “overwhelmingly counterbalanced by the factors supporting” such a finding.

¹⁶ Hildreth testified that employees at three (Washington; Richmond; Greensboro) of the seven newly acquired terminals are also required to be “OQ” qualified by DOT for “covered tasks” that they perform at the terminals. However, it is not clear from the record whether “covered tasks” at the terminals require as much skill to perform as “covered tasks” at the pipelines, or whether “OQ” requirements for these tasks are identical. In its post-hearing brief, the Employer acknowledges that the terminal operators are not yet subject to the same training as unit employees.

employees at the acquired terminals reflects this difference in skills and training. Except for entry level employees, the terminal operators at the new facilities are paid significantly less (about \$3 to more than \$5 per hour) than unit employees with comparable years of experience.

The principal function of unit employees and those sought to be accreted is also apparently different. Director of Operations Hildreth testified that the principal function of employees on the actual pipeline is safety and environmental protection. They are also responsible for product quality. They make batch changes to ensure correct product is flowing through the correct line or tankage. The principal function of the pipeline terminals, on the other hand, is to effect delivery to customers. The various gasoline products are pumped through the line and are received in tanks where they are loaded on the racks for delivery to customers. The terminals are configured differently than other Employer locations (with similar equipment, such as tanks, pumps, and valves). Though there is some loading and unloading of trucks at other Employer locations (such as the tank farms), it is not as routine or as frequent, as at the newly acquired terminals, according to Hildreth.

Interchange: There is no evidence of any significant daily interaction among unit employees and the group sought to be accreted. Though the Employer claims in its post-hearing brief that the terminal operators and unit employees “often work in close proximity to one another,” there is no record evidence which supports this broad-brush assertion. Further, the record establishes that there has been minimal interchange of function, at least to date. Director of Field Operations Hildreth testified that the interchangeability of unit employees and new employees is, at present, only “one-way.” According to Hildreth, the unit O&M specialists have a higher level of skill and training and are therefore capable of performing terminal operator duties at the newly acquired terminals. However, without additional training which meets DOT requirements, the terminal operators at the newly acquired terminals, according to Hildreth, “could not work on a pipeline facility.” Indeed, there is no evidence that any of the employees at

the newly acquired terminals have worked at other pipeline locations since the acquisition in March, 2004.¹⁷

There is not much evidence of interchange going the other way, from the unit side of the fence to the newly acquired terminal side. There is no evidence that any unit employees have ever worked at five of the seven newly acquired terminals: Roanoke; Greensboro; Knoxville; Richmond; and Charlotte.¹⁸ The Employer contends that it intends to implement such temporary interchange throughout the system, though to date this has occurred at only two of the newly acquired terminals in Washington and Collins. Director of Operations Hildreth testified that some unit employees in Washington have been brought “in on a temporary assignment” at the Washington terminal (where two of the 21 terminal operators work). The newly acquired terminal in Collins (where two more terminal operators are based) is “the only other location where we did interchange,” according to Hildreth. On apparently only one occasion, the Employer sent over an unspecified number of mechanics from the tank farm in Collins to the newly acquired truck terminal to replace a pump that had failed in that facility.

The Union filed grievances against the Employer protesting the Employer’s use of unit employees at the newly acquired Washington and Collins terminals, claiming violations of its contract provisions pertaining to recognition and job classifications. Director of Operations Hildreth testified that the Employer intends “ultimately to fully integrate and interchange” employees, though such integration and interchange appears to be very limited, to date. He indicated that management’s “hands are tied,” at present, because the Employer is “not receiving much cooperation” from the Union. In its post-hearing brief, the Employer states that “there would have been considerably more consolidation and integration had the Union not filed” the

¹⁷ All job openings are posted corporate-wide. Evidently, one terminal operator recently applied for a position in Florida in another Employer division; the record does not indicate whether he was chosen for the position.

¹⁸ There is sketchy testimony regarding a one- or two-day training session which may have been held for unit employees and terminal operators based in Knoxville.

two grievances involving the few instances of unit employees working at the newly acquired Washington and Collins terminals.

Day-to-Day Supervision: The record establishes that the Employer's employment and labor relations policies are set and administered centrally by corporate officials. Further, there is substantial decision-making authority relative to pipeline employees vested in management above the local level. Director of Operations Hildreth and the four operations managers¹⁹ jointly decide on whether open bargaining unit positions should be filled (subject to budget constraints). The Operations Managers play a role in discipline, with the involvement of Hildreth and John Dalton, Director of Human Resources. Hildreth makes the final decision as to whom to hire, based on recommendations from the Operations Managers and local supervision. Further, only Hildreth and Dalton have authority to fire employees, subject to review by the Employer's corporate human resources and legal departments. All collective bargaining agreements are negotiated centrally, by corporate Director of Labor Relations, Tim Garnett. Dalton makes the decision on whether grievances should be arbitrated and Garnett handles all arbitrations and Board proceedings.

Notwithstanding this evidence of centralized labor relations, the record establishes that local supervisors at the Employer's locations, including the new terminals, have significant impact on day-to-day concerns of employees at their respective facilities. The Employer hired five former Exxon Mobil staff (three superintendents, one supervisor, and one leader staff support group) from five of seven of the newly acquired terminals to be supervisors at each of those locations, where about 15 of the 21 terminal operators work: Richmond; Roanoke; Greensboro; Charlotte; and Collins. A new supervisor (evidently not a former Exxon Mobil employee) was hired for the Knoxville terminal, where four of the terminal operators work.

¹⁹ Murray Clayton, based in Greensboro; Eddie Newman, based in Helena; Marty Sanford, based in Collins; and Earl Crochet, based in Baton Rouge.

None of these supervisors has any authority or responsibility over unit employees, though there is common supervision in Washington, where one supervisor oversees both operations (including eight unit employees at the pipeline location and two terminal operators at the newly acquired terminal).

According to Dalton, the Employer's local supervisors²⁰ schedule, assign, and monitor employees, and have authority to grant vacation requests or other time off. They are apparently the only officials who regularly walk around the facility, "seeing what work is going on and what has to be done." Moreover, local supervisors, together with their respective operations managers, interview prospective new employees utilizing structured interview guides prepared by higher management.²¹ They then reach a "common decision" as to whom to hire, subject to Hildreth's approval, and have input on the wage rate for entry level new hires.²² According to Dalton, the local supervisors have authority to resolve employee problems or oral grievances before they are reduced to written grievances. There is no evidence that supervisors at the new terminals do not have the same authority to address employee problems and concerns.²³

²⁰ In addition to the supervisors discussed above for terminal operators at the newly acquired terminals, there are supervisors for unit employees at the following pipeline locations: Richmond; Greensboro; Gastonia; Bremen; Doraville; Helen; Collins; and Baton Rouge. There are no supervisors at the two-employee location in Chattanooga or at the one-employee locations in: Spartanburg; Belton; Charlotte; Knoxville; Athens; Austell; Macon; Columbus; Montgomery; Oxford; Meridian; and Roanoke.

²¹ In its post-hearing brief, the Employer asserts that, "these supervisors cannot hire (*or even interview, . . .*)."

(Emphasis supplied.) This contention is contrary to the testimony of Director of Human Resources Dalton, who testified, "let's assume that there's an opening either at one of these terminals or at one of the previous Plantation [pipeline] locations. The way it would be done is using a structured interview guide, *the local supervisor* and the operations manager for that area would interview and then . . . reach a common decision of who *they* think they want to bring on board . . ." (Emphasis supplied.)

²² The supervisors at the newly acquired terminals did not play any role in the hiring of employees at the time of the acquisition.

²³ At the hearing, the Employer's witnesses drew no distinctions in this regard between the authority of local supervisors at the pipeline locations and at the new locations. The Employer indicated a general intention to realign the supervisory hierarchy, but did not go into detail as to any specifics. The Employer does not seek to include the supervisors at the new locations in the unit, and none of the supervisors at the pipeline locations are included in the unit. Evidently, all of the Employer's supervisors are considered to be statutory "non-exempt" employees for overtime purposes. The Employer refused to stipulate that any of its local supervisors are supervisors under the Act.

Bargaining History: Prior to the acquisition in March, 2004, the Employer attempted to secure the Union's agreement that employees at the new terminals would constitute an accretion. Though there is some dispute as to the initial response of the International Staff Representative assigned to the local Union, it is clear that the local Union President objected to the Employer's proposal as soon as he heard about it. In any event, a few weeks after the acquisition in March, representatives of the Employer and the Union met to attempt to resolve the matter, without any success.

An element militating against accretion is the prior bargaining history at the seven acquired terminals prior to the acquisition. The record establishes that the former Exxon-Mobil employees at these locations were historically represented by four independent Exxon unions.²⁴ Further, there were collective bargaining agreements in effect at the time of the acquisition which the Employer herein did not assume. This is outweighed, the Employer argues, by the fact that pipeline and terminal employees are combined in two other units at other pipelines in Texas and California in which the Employer is involved. Further, the Employer argues that a work stoppage at any or all of the seven newly acquired terminals would severely disrupt the flow of gasoline products throughout the pipeline system, as well as the operations at several airports which could not be adequately supplied by the Colonial pipeline, the Employer's competitor which shares much of the same right of way.

Terms and Conditions of Employment: As of the date of the acquisition in March, the Employer applied the terms and conditions of employment set forth in its collective bargaining agreement with the Union to the 21 former Exxon-Mobil employees at the seven acquired locations. These employees thus enjoy all the same benefits as unit employees, including overtime, holidays, vacation, and health and welfare benefits. However, as is noted above, the Employer created and applied a lower wage scale, derived in part from other contracts with other

²⁴ None of these unions intervened in this proceeding.

affiliates of the Union covering terminal employees. For vacation and short-term disability purposes under the agreement, the employees will have company service bridged back to their start with Exxon-Mobil; but they will have classification seniority only as terminal operators and in none of the classifications currently listed in the collective bargaining agreement. Moreover, regardless of their prior tenure with Exxon Mobil, the 21 terminal operators will be considered probationary employees for the first 12 months of their employment, subject to termination without resort to the grievance procedure or arbitration (as per Article 7 of the agreement, applicable to probationary period).

Based on the foregoing and the record as a whole, I have concluded that the factors militating in favor of accretion are strongly outweighed by those factors which militate against it. Here, a number of factors support the accretion claim, including the Employer's centralized control of labor relations, as well as the geographic proximity of six of the seven newly acquired terminals to existing pipeline locations. Likewise, the similarity in terms and conditions of employment (e.g., overtime, holidays, vacation, and health and welfare benefits) between unit employees and the group sought to be accreted also weigh on the accretion side of the scale.

On the other hand, I find that there is no evidence of any significant interaction between unit employees and the terminal operators, the group sought to be accreted. Also especially important is the absence of any significant interchange of function, other than the few only "one-way" examples described above at two of the seven acquired locations. Though the Employer intends ultimately to fully integrate and interchange personnel, the Board ascribes significant weight only to actual interchange. See Combustion Engineering; Judge & Dolph Ltd.; E.I. Du Pont; and Mac Towing, cited supra. The lack of significant interchange is one of the two especially important factors considered by the Board. E.I. Du Pont, cited supra.

In reaching my conclusion herein, I have also considered the separate supervision of 19 of the 21 terminal operators at six of the seven newly acquired locations (excluding

Washington). Though much supervisory power is vested in the operations managers and higher management, I find that the local supervisors have a significant impact on the day-to-day concerns among employees at their respective locations. See Giant Eagle, and Judge & Dolph, cited supra. The record establishes that they schedule, assign, grant time off, and monitor employees; they are evidently the highest officials regularly present on a day-to-day basis at the newly acquired locations. Local supervision also has authority to resolve problems and oral grievances, a significant matter of concern to employees at their respective locations. Separate supervision is the other especially important factor considered by the Board in accretion cases. See E.I. Du Pont, cited supra.

In reaching my conclusion herein, I have also taken into account the different level of skills and training of unit employees and the terminal operators, see Dennison Manufacturing Co., supra, 296 NLRB at 1036; the differences in terms and conditions of employment noted above (such as wage scale and the treatment of terminal operators as probationary employees); as well as the collective bargaining history at the newly acquired terminals under Exxon Mobil prior to the Employer's acquisition. Based on the foregoing, I find that the terminal operators do not share an overwhelming community of interest with the existing bargaining unit. On the contrary, the factors favoring accretion – geographic proximity, centralized control of labor relations and similarity in other terms and conditions of employment – are strongly outweighed by those factors which, as set forth above, militate against it. Accordingly, I shall dismiss the petition herein.

ORDER DISMISSING PETITION

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by July 29, 2004.

Dated at Atlanta, Georgia, on this 15th day of July, 2004.



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